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May 26, 2015

VIA HAND DELIVERY

Office of the General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: **MUR 6869**

Dear Sir/Madam:

We serve as counsel for the Commission on Presidential Debates (the "CPD") and the individual respondents in connection with MUR 6869. On behalf of all respondents, we submit this brief response to the April 10, 2015 additional submission filed by Level the Playing Field ("LTPF") and Peter Ackerman (collectively, Complainants).

As pointed out in CPD's response to the Complaint, the Complainants in MUR 6869 present stale arguments that the Federal Election Commission (the "FEC" or the "Commission") has considered and rejected on multiple occasions. FEC decisions rejecting these assertions include: MURs 4987, 5004, 5021, 5207, 5378, 5414 and 5530. Judicial decisions rejecting these assertions include: *Buchanan v. FEC*, 112 F.Supp. 2d 58,74-75 (D.D.C. 2000), *aff'd in part*, No. 00-5337 (D.C.Cir. September 29, 2000) ("*Buchanan*"); *Natural Law Party v. FEC*, Civ. Action No. 00-02138 (D.D.C. September 21, 2000), *aff'd in part*, No. 00-5338 (D.C. Cir September 29, 2000).

Complainants now have provided the FEC with a supplemental filing touting what they characterize as "additional evidence based on events occurring after the Complaint was filed, which [allegedly] supports the Complaint." The alleged "new evidence" is an interview CPD Co-Chair Frank J. Fahrenkopf, Jr. did with Sky News on April 1, 2015 concerning the Leaders Debate in Great Britain that was to take place later that same day. In this interview, Complainants purport to find "admissions" that support their claim that CPD is biased and has "a candidate selection system designed to include the Republican and Democratic nominees and exclude all others." Complainants' assertion and contrived filing is without merit for multiple reasons.

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As an initial matter, Complainants' argument rests on a blatant distortion of what Mr. Fahrenkopf actually said. What appears to be a full transcript of the April 1 interview is attached as Exhibit A to Complainants' submission. Complainants quote very few of Mr. Fahrenkopf's actual spoken words. The full passage they rely upon appears at page 2 of the transcript. The full question (which is about then-upcoming UK debate) and Mr. Fahrenkopf's full answer are as follows:

AB [Adam Boulton]: *And, this time around, of course, together, the television companies wanting to do the two lead candidates, the three lead candidates, and then a four candidate debate, the conservative leader said he wouldn't do that, and we've ended up with a seven person, a seven party, debate. What do you think the prospects for that are?*

FF [Frank Fahrenkopf]: *Well, you know the primary debates here in the United States, we often – and of course the Republicans three years ago, had seven or eight people on the stage, and people jokingly say it's less of a debate than a cattle show, because there's such little time for each candidate to get across in the short period what their views are on issues. That's why in the general election debate, we have a system, and we, you know, as you know, primarily go with the two leading candidates, it's been the two political party candidates, save in except for 1992 when Ross Perot participated in the debates. So, seven people on the stage at one time is very difficult, it's going to take a very clever moderator to make sure that each candidate gets an opportunity to put forth their views.*

In this passage, Mr. Fahrenkopf in no way states, as Complainants argue, that the *purpose* of the CPD's candidate selection criteria is to limit participation to the two major party candidates. Rather, Mr. Fahrenkopf was asked about the prospects for the Leaders Debate which was to take place that evening among seven candidates. As part of his response, he noted the historical fact that, in the United States, the general election debates usually have been between two candidates, who have been the major party nominees. He also notes that in 1992, that was not the case and Ross Perot also was included in the debates. Mr. Fahrenkopf notes that a debate with seven candidates would be difficult to manage. Notwithstanding Complainants' highly selective quotes and strained assertions, Mr. Fahrenkopf's observations of fact are straightforward and wholly irrelevant to the actual issue raised by the Complaint herein: whether CPD's candidate selection criteria comply with FEC regulations.

¹ Although it may be unnecessary, we submit herewith a short sworn declaration from Mr. Fahrenkopf addressing these points and the actual purpose of the CPD's nonpartisan candidate selection criteria. As stated previously stated, the CPD's criteria have been designed to comply with applicable law and to identify those candidates, regardless of party affiliation or lack thereof, who have achieved a level of electoral support such that they realistically are considered to be among the principal rivals for the Presidency. The CPD's nonpartisan candidate selection criteria for 2000-2012 were submitted as Exhibits B-E to the Declaration of Janet H. Brown, which was submitted with CPD's December 15, 2014 Response to the Complaint herein.

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Beginning on page 3 of their supplemental submission, Complainants drop any pretense of limiting their submission to supposed new evidence. Instead, they reprint allegations from a Complaint filed against CPD eleven years ago, in 2004. Complainants reprint various statements attributed by the Complainant in MUR 5414 (2004) to several then former and current CPD board members. Complainants herein, as did the Complainant in MUR 5414, cite these claimed statements as purported evidence that CPD has a supposed bipartisan purpose.

The statements did not support the Complainants' thesis in MUR 5414 eleven years ago, and they do not now somehow support the Complainants' thesis herein. In MUR 5414, the FEC General Counsel's report carefully reviewed the selected statements and the responsive materials the CPD provided. The report did not find the statements to be probative of a violation and recommended that the Commission find no reason to believe a violation had occurred, which the Commission adopted. For the Commission's convenience, we attach hereto the First General Counsel's report in MUR 5414, which reviewed the matter of the statements quite fully.

In addition, in connection with MUR 5414, CPD submitted affidavits from each of the then former and current CPD board members to whom statements had been attributed. Each affiant made very plain that the selected short statements Complainant had attributed to them did not reflect their views with respect to the participation of non-major party candidates in general election debates sponsored by CPD. Each affirmed that it was his view that CPD's debates should include the leading candidates regardless of their party affiliation or lack thereof and that CPD had adopted thoughtful criteria intended to achieve this goal. We also attach those affidavits from 2004 for your reference. Another eleven years now have passed, but Complainants cite these statements, some of which were very dated even in 2004, in support of their "new evidence" submission. The statements from the Complaint in MUR 5414 are even less probative of anything in 2015 than they were in 2004.²

It is regrettable when those who prefer a different approach to extending debate invitations choose to advance their views by attacking the motives of the CPD and suggesting that CPD makes its debate invitation decisions to serve some purpose other than its stated voter education goals. These baseless attacks detract from a discussion of the important topic of candidate selection criteria.

² One statement Complainants parrot from the 2004 Complaint is a reference to an Op-Ed article written by longtime CPD director Newt Minow in 1984 – over 30 years ago and several years before CPD was even formed. The First General Counsel's report in MUR 5414 addressed this article at page 14, note 11, noting the lack of probative value of what it described even then as a "20-year old newspaper article, written before the CPD was established...."

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In any event, since 2000, CPD's criteria have been wholly transparent. Each election cycle, they have been adopted and published well in advance of the debates. Their proper application has been wholly straightforward and readily confirmable. Most importantly, the CPD's criteria have repeatedly been found to comply with the FEC's regulations. The Complaint herein is without merit.

Respectfully submitted,

Loss, Judge & Ward, L.L.P.

By: 

Lewis K. Loss

Attachments

cc: Jeff S. Jordan, Esq. (w/attachments)
Supervisory Attorney, Central Enforcement Docket
Janet H. Brown (w/attachments)

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MUR 5414

FIRST GENERAL COUNSEL'S REPORT

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DEC 07 2004

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, D.C. 20463

FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5414

DATE COMPLAINT FILED: Feb. 19, 2004

DATE OF NOTIFICATION: Feb. 25, 2004

DATE ACTIVATED: May 10, 2004

EXPIRATION OF STATUTE OF LIMITATIONS:

October 3, 2005¹

COMPLAINANT:

George Farah, Executive Director
Open Debates²

RESPONDENT:

Commission on Presidential Debates

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 431(9)(B)(ii)

2 U.S.C. § 441b(a)

11 C.F.R. § 110.13

11 C.F.R. § 114.1(a)

11 C.F.R. § 114.4(f)

INTERNAL REPORTS CHECKED:

None

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

In this matter, another in a series of complaints filed against the Commission on Presidential Debates ("CPD"), a non-profit corporation, Complainant alleges that the CPD has violated and continues to violate the prohibition on corporate contributions in the Federal Election Campaign Act of 1971, as amended ("the Act") because:

¹ This date is five years from October 3, 2000, the date of the first presidential debate in 2000, and the first debate about which Complainant complains that is within the statute of limitations.

² Complainant describes Open Debates as "a nonpartisan, nonprofit organization committed to reforming the presidential debate process so as to maximize voter education." Complaint at 1. Complainant has written a book on the topic of reforming the presidential debate process, entitled *No Debate. How the Republican and Democratic Parties Secretly Control the Presidential Debates* (Seven Stories Press) (2004) ("*No Debate*").

1 its staging of general election presidential debates does not fall within the "safe
2 harbor" provision of 2 U.S.C. § 431(9)(B)(ii), which has been construed by the
3 Federal Election Commission to exempt, under certain circumstances, corporate
4 sponsorship of nonpartisan candidate debates from the general prohibition on
5 corporate contributions. 11 C.F.R. § 110.13. [The CPD] accepts corporate
6 contributions to defray the costs of staging general election presidential debates, but
7 it does not stage those presidential debates in accordance with three of the
8 requirements of 11 C.F.R. § 110.13: 1) [The CPD] does "endorse, support, or
9 oppose political candidates or political parties;" 2) it does not use pre-established
10 objective criteria as required by 11 C.F.R. § 110.13 to determine which candidates
11 may participate in a debate; 3) and its criteria were "designed to result in the
12 selection of certain pre-chosen participants."
13

14 Complaint at 2. Complainant requests the Commission to prohibit the CPD from staging future
15 candidate debates that are partially financed by corporate contributions. *Id.* at 1, 16.

16 As discussed in more detail below, the Commission and the courts have already considered
17 and rejected most of the allegations raised by Complainant to support his claims that the CPD has
18 violated the Commission's debate staging regulations. Complainant, however, also advances certain
19 factual allegations that the Commission has not squarely addressed in the past: the existence and use
20 of Memoranda of Understanding, alleged to be secret agreements between the major party
21 campaigns, that purportedly override the CPD's publicly announced candidate selection criteria; and
22 purported excerpts from Complainant's interviews with board members of the CPD and campaign
23 officials, in which they allegedly express the CPD's animus toward third-party and independent
24 candidates' participation in the debate process or support for having the major parties control the
25 CPD's selection process.³ The CPD's response to the complaint discusses and denies
26 Complainant's allegations and provides declarations from the CPD board members whose excerpted
27 interviews are referenced in the complaint. In addition, on July 26, 2004, Complainant filed a

³ At the time of the complaint and response, one of these board members, Senator Alan Simpson, was a sitting CPD board member. He has since resigned, see Billy House, *Bush's Camp May Cut One Debate*, THE ARIZONA REPUBLIC, September 3, 2004. None of the other board members interviewed were on the CPD board at the time the complaint was filed.

1 supplement, which he called an "addendum," presenting what is characterized as "[t]hree additional
2 sources of information that have been discovered since the complaint was filed"—allegations about
3 state parties' helping to fund one of the 2004 presidential debates and a July 11, 1988 letter to the
4 CPD from the Internal Revenue Service ("IRS"), and various newspaper articles concerning the
5 debates—that Complainant alleges "bolsters its claims." Supplement at 1.⁴

6 This Report concludes that the complaint and the supplement, analyzed in conjunction with
7 the CPD's response, the relevant MUR precedent and the public record, are insufficient to trigger an
8 investigation of the CPD's past and continuing eligibility to stage presidential debates. Therefore,
9 this Office recommends that the Commission find no reason to believe that the CPD violated, or
10 continues to violate, the Act.

11 **II. APPLICABLE LAW AND DISCUSSION**

12 **A. Background**

13
14 Since 1988, the CPD has staged presidential and vice presidential debates pursuant to
15 2 U.S.C. § 431(9)(B)(ii)'s safe harbor provision which exempts from the definition of
16 "expenditures" "nonpartisan activity designed to encourage individuals to vote or register to vote."
17 Commission regulations provide that "[n]onprofit organizations described in 26 U.S.C. 501(c)(3) or
18 (c)(4) and which do not endorse, support, or oppose political candidates or political parties may
19 stage candidate debates in accordance with this section and 11 C.F.R. § 114.4(f),"

20 11 C.F.R. § 110.13(a)(1), provided that the staging organization does not structure the debates to
21 promote or advance one candidate over another, and that the criteria for candidate selection are

⁴ Pursuant to the usual practice regarding supplements to complaints, this Office sent the CPD a copy of the supplement. The CPD did not respond to the supplement.

1 objective and pre-established, pursuant to 11 C.F.R. §§ 110.13(b) and (c).⁵ *See also* 11 C.F.R.
2 §§ 100.92 and 100.154 (exempting funds used to defray costs incurred in staging candidate debates
3 in accordance with the provisions of 11 C.F.R. §§ 110.13 and 114.4(f) from the definitions of
4 "contribution" and "expenditure," respectively). Thus, if the debate staging organization meets the
5 requirements of section 110.13(a)(1), and stages debates in accordance with sections 110.13(b) and
6 (c) and section 114.4(f), the organization's activities are exempt from the definitions of
7 "contribution" and "expenditure."

8 B. The Commission and the Courts Have Considered and Rejected Most of
9 Complainant's Arguments

10
11 Complainant generally contends that the CPD is a product of the two major parties, actively
12 promotes their interests, and is so infected with bias against third party candidates that it has
13 violated and is violating the "nonpartisan" and "debate selection criteria" prongs of the
14 Commission's debate regulations. In partial support, Complainant advances the following
15 arguments. First, he argues that the CPD is bipartisan, not nonpartisan, based on its founding by
16 Frank J. Fahrenkopf, Jr., and Paul G. Kirk, Jr., individuals who were, at that time, chairmen of the
17 Republican National Committee ("RNC") and the Democratic National Committee ("DNC"),
18 respectively, and who are still the co-chairs of the CPD. He also argues that the CPD is not
19 "nonpartisan" based on the alleged partisan composition of the CPD's board of directors. Second,
20 Complainant alleges that the CPD's 1988-1996 debate selection criteria were subjective and biased
21 against third-party candidates. Third, he alleges that the fifteen per cent voter support threshold,
22 which was first included in the CPD's 2000 debate selection criteria, is subjective, too high, and

23
⁵ 11 C.F.R. §§ 114.4(f)(1) and (3) provide that corporations staging debates in accordance with 11 C.F.R. § 110.13 may use their own funds to do so, and may also accept donations from other corporations and labor organizations for the purpose of staging the debates.

1 calculated to exclude third-party and independent candidates.

2 Previous MUR complainants have made the same or similar allegations. For example, in
3 MURs 4451 and 4473, complainants alleged that the CPD's 1996 debate selection criteria were
4 subjective and therefore violated 11 C.F.R. § 110.13(c), as did the CPD's alleged decision to invite
5 the Democratic and Republican nominees solely on the basis of their parties' nominations. In
6 MURs 4987, 5004, and 5021, complainants alleged that the CPD and its board of directors are
7 bipartisan, not nonpartisan. In support, they stated that the CPD was created by the former chairmen
8 of the DNC and RNC to allow the major parties to control the presidential and vice presidential
9 debates and to promote their candidates, in violation of 11 C.F.R. § 110.13(a). Complainants also
10 maintained that the CPD's 2000 debate selection criteria, particularly its requirement that debate
11 participants demonstrate popular support levels of at least fifteen per cent, were subjective and
12 violated 11 C.F.R. § 110.13(c). Likewise, the complainant in MUR 5207 alleged that the CPD was
13 partisan and that the major parties monopolized the debates by arranging to limit participation to
14 their candidates. In all of these matters, the Commission found no reason to believe that the CPD
15 had violated the Act. In subsequent section 437g(a)(8) dismissal suits brought by some of these
16 MUR complainants, courts found for the Commission.⁶ Based on this precedent, these arguments
17 should be rejected.

⁶ In *Buchanan v. FEC*, 112 F.Supp.2d 58 (D.D.C. 2000), *aff'd on different grounds*, No. 00-5337 (D.C. Cir. September 29, 2000) ("*Buchanan*"), brought by complainants in MUR 4987 pursuant to 2 U.S.C. § 437g(a)(8), the court upheld the Commission's determination that the CPD was an eligible debate staging organization. With respect to plaintiffs' allegation that the CPD was a partisan organization, the court stated that "the General Counsel found, and the FEC agreed, that plaintiffs failed to provide enough evidence to establish a reason to believe that the CPD" did not meet the eligibility requirements of 11 C.F.R. § 110.13(a)(1), noting that, among other things, the "General Counsel determined that plaintiffs' evidence failed to show . . . that the 'CPD is controlled by' the two major parties." 112 F.Supp.2d at 70-71. The court noted that the evidence submitted by plaintiffs included the founding of the CPD by its two co-chairs who were then the respective chairmen of the RNC and the DNC and the composition of CPD's board as consisting largely of current and former elected officials of the two major parties and party activists. *Id.* at 71. The court concluded that "[b]ased on the factual record before it, the FEC did not abuse its discretion in finding that there was no 'reason to believe' that the CPD currently 'do[es] not endorse, support, or oppose political candidates or political parties.' 11 C.F.R. § 110.13(a)(1)." *Id.* at 73. Plaintiffs also asserted that the CPD's debate selection criteria were not
(footnote continues on the following page)

Further, to the extent Complainant relies on arguments rejected by the Commission and the courts as the foundation for the additional information he advances that is discussed below, that foundation has shifted considerably and is therefore shaky. For example, not only did challenges based on Fahrenkopf's and Kirk's leadership of the CPD not win the day when they were fresh, but, as neither man has been a party official since 1989, the passage of time has rendered such assertions less persuasive. As for challenges to the CPD's pre-2000 debate selection criteria, these are no longer relevant, given the CPD's 2000 selection criteria which even the complaint characterizes as "forc[ing] some transparency" (Complaint at 11). See also Complainant's book, *No Debate*, at 67 ("The advantage of the 2000 criteria is that it forces some transparency—candidate participation is less subject to the backdoor manipulations of Democrats and Republicans . . . CPD director Antonia Hernandez said, 'You might not like the 15 percent threshold, but it's clearly articulated, and if a person meets it, then that candidate gets in'" (quoted from a reported interview with Complainant)).

objective and, in particular, that the fifteen per cent threshold was too high, given that the threshold to qualify a candidate's party to receive public funding is five per cent. *Id.* The court, however, found that the "15 % support level set by the CPD" was not inconsistent with the Commission's regulations, *id.* at 74, that the Commission's explanation for its decision was "sufficiently reasonable," *id.* at 76.

In *Natural Law Party v FEC*, Civ. Action No. 00CV02138 (D.D.C. September 21, 2000), *aff'd on different grounds*, No. 00-5338 (D.C. Cir. September 29, 2000), brought by complainants in MUR 5004, the court found for the Commission based on the reasoning set forth in *Buchanan*. See also *Becker v FEC*, 230 F.3d 381 (1st Cir. 2000) (rejecting challenge by Ralph Nader and others to the Commission's debate regulations). The Commission in MUR 5207 also rejected similar arguments, although the matter focused more on CPD's specific selection criteria and less on CPD's eligibility to be a sponsoring organization. Although the MUR 5207 complainant subsequently brought a section 437g(a)(8) suit in the Western District of Washington, the district court dismissed the suit on procedural grounds and the Ninth Circuit affirmed the dismissal.

Recently, in another section 437g(a)(8) dismissal suit involving a challenge to the Commission's finding of no reason to believe that CPD violated the Act in MUR 5378, a district court granted plaintiffs summary judgment in part and reversed and remanded the case to the Commission for further proceedings consistent with the court's decision. *Hagelin v FEC*, Civil Action 04-00731 (HHK). MUR 5378 involved the CPD's decision to exclude third party candidates from the audience of the October 3, 2000 debate, that decision is not raised in the instant MUR.

C. Memoranda of Understanding

1. Complainant's allegations

Complainant contends that despite the CPD's published debate selection criteria,

[q]uestions concerning third-party participation...are ultimately resolved behind closed doors, by negotiators for the Republican and Democratic candidates. These negotiators draft secret debate contracts called "Memoranda of Understanding" that dictate precisely how the debates will be run—from decreeing who will participate, to prohibiting candidate-to-candidate questioning, to stipulating the height of the podiums...Posing as an independent sponsor, the CPD implements the directives of the "Memoranda of Understanding."

Complaint at 7-8. According to Complainant, by allegedly implementing "these shared demands of the major party candidates...the CPD demonstrates clear 'support' for the Republican and Democratic candidates, and clearly 'oppose[s]' third-party and independent candidates, in violation of 11 C.F.R. § 110.13(a)." *Id.* at 9. Complainant also maintains that "[t]he 'Memoranda of Understanding'—not the CPD's criteria—were 'used to pick the [debate] participants,' and the CPD's criteria were therefore 'designed to result in the selection of pre-chosen participants' that were chosen by the major party candidates, in direct violation of 11 C.F.R. § 110.13(c)." *Id.* at 12.

In support of these propositions, which the complaint asserts were operative for the 1988, 1992, 1996 and 2000 debates (*id.* at 7-9), Complainant relates events surrounding the selection of debate participants in the last three of these election cycles. In 1992, according to Complainant, when independent presidential candidate Ross Perot reentered the presidential race on October 1st, after having withdrawn in July, the Bush and Clinton campaigns agreed that Perot should be invited to participate in the debates. Complainant alleges that the major party negotiators submitted their "Memorandum of Understanding" to the CPD, which stated that Perot would be included in the debates if he acquiesced in the terms of the agreement, and that the Memorandum further stipulated:

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1 The debates will be sponsored by the [CPD], provided that the [CPD] agrees to all
2 provisions of this agreement. In the event that the [CPD] does not accept the provisions
3 of this Agreement or is unable to fulfill the provisions of this Agreement [sic],
4 representatives of the two (2) candidates who are signatories to the Agreement will
5 immediately use their best efforts to obtain a mutually agreeable alternate sponsor or
6 sponsors for the debates on the dates set forth and only on the same terms and conditions
7 [sic] agreed upon herein.⁷

8
9 Complaint at 13. According to Complainant, when the major parties rejected the CPD's proposal
10 that Perot be included in the first debate and that his inclusion in the next two debates would be
11 reviewed thereafter, the CPD agreed to Perot's inclusion in all three debates.

12 With respect to 1996, when Perot ran for president again, this time as the nominee of the
13 Reform Party, Complainant relates that the CPD unanimously approved its Advisory
14 Committee's September 17, 1996 recommendation to invite only Senator Dole and President
15 Clinton to participate in the events. Following the CPD's determination, according to
16 Complainant, Dole, who allegedly wanted Perot excluded, and Clinton, who allegedly proposed
17 that Perot be included in the first debate, agreed that Clinton could dictate the schedule and
18 format of the debates if Clinton agreed to exclude Perot entirely. Complainant states that "[t]he
19 major-party candidates submitted a secret 'Memorandum of Understanding,'" dated September
20 28, 1996, "to the CPD, which stipulated, 'The participants in the two Presidential debates will be
21 Bill Clinton and Bob Dole,'" and further included "stipulation" language similar to that included
22 in the 1992 Memorandum of Understanding quoted *supra*. Complaint at 14-16 and Exhibit C;
23 *see also* n. 7.

24 Finally, Complainant alleges that in 2000, George W. Bush and Al Gore did not want
25 third-party candidates Ralph Nader or Pat Buchanan included in the debates. Complainant

⁷ The "stipulation" paragraph in the 1992 Memorandum of Understanding does not contain the phrases "or is unable to fulfill the provisions of this Agreement" and "only on the same terms and conditions." Exhibit B. It appears that Complainant is citing the "stipulation" paragraph from the 1996 Memorandum of Understanding. *See* Exhibit C.

1 alleges, citing an "anonymous interview" with him, that the "2000 'Memoranda of
2 Understanding' stipulated that the participants in the presidential debates would be Al Gore and
3 George W. Bush," and notes that the CPD sponsored three presidential debates that only included
4 Gore and Bush. Complaint at 16.

5 2. The CPD's Response

6 According to the CPD, "the complaint claims—as if it were newly discovered—another well
7 known fact: that the major party nominees negotiate directly with one another concerning various
8 aspects of the debates." Response at 7.⁸ The CPD adds, however, that "[w]hat the major party
9 nominees choose to put in agreements to which the CPD is not a party in no way binds the CPD and
10 it does not constitute evidence of the CPD's actual decisionmaking process." *Id.* at 8. The CPD
11 provides as Tab 1 to its Exhibits a Declaration of its Executive Director, Janet H. Brown ("Brown
12 Declaration"). The Brown Declaration, assertedly based on personal knowledge, states that "[a]ny
13 understandings or agreements between the major party nominees have not been the basis for
14 decisions by the CPD concerning candidate eligibility to participate in the CPD's debates; those
15 decisions . . . have been based on a good faith application of the CPD's published nonpartisan
16 candidate selection criteria." Brown Declaration at 1, 16. Moreover, according to the Brown
17 Declaration, "[a]t no time did any campaign or the representative of any campaign have a role in the
18 Advisory Committee's or the CPD Board's decision-making process." *Id.* at 16.

19 More specifically with respect to the 1992 debates, the Brown Declaration maintains that at
20 a meeting on September 9, 1992, after Perot's July withdrawal, the Advisory Committee
21 unanimously agreed that no non-major candidate had a realistic chance of winning the election.

⁸ The CPD asserts that, as an historical matter, going back to the Lincoln-Douglas debates, candidates participating in important debates have historically negotiated directly concerning aspects of those debates. *See* Response at 7 and Tab 14 attached thereto.

1 However, following Perot's reentry into the race on October 1, 1992, the Advisory Committee
2 reconvened on October 5th at the CPD's request, and concluded that Perot satisfied the selection
3 criteria; based on that recommendation, the CPD invited Perot and his vice presidential candidate to
4 participate in the first two debates. The Brown Declaration further states that "[w]hen it became
5 clear that the debate schedule—four debates in eight days—would prevent any meaningful
6 reapplication of the selection criteria," the CPD recommended that Perot participate in all three
7 presidential debates, and he did so. *Id.* at 9; *see also* Tab A to CPD Exhibits (October 7, 1992 letter
8 to campaign chairs). According to the Brown Declaration, the 1992 Advisory Committee had faced
9 an "unprecedented situation in which a candidate, whose standing in the polls had been
10 approximately forty per cent, had withdrawn from the race, but then rejoined the campaign shortly
11 before the debates, with unlimited funds to spend on television campaigning;" it ultimately decided,
12 however, that the possibility of Perot's election was not unrealistic under a scenario where no
13 candidate received a majority of electoral votes and the election was decided by the House of
14 Representatives. Brown Declaration at 9-10.

15 With respect to the 1996 debates, the Brown Declaration maintains that the CPD Board
16 unanimously accepted the Advisory Committee's recommendation that only the major party
17 presidential and vice presidential candidates be invited to participate in the debates. The Brown
18 Declaration states that the Advisory Committee found that Perot did not have a realistic chance of
19 winning the 1996 election, distinguishing the circumstances from 1992 when Perot had stood at
20 forty per cent in the polls prior to his withdrawal and was not limited by his acceptance of federal
21 matching funds. *Id.* at 10-11.

22 Turning to the 2000 debates, the CPD observes that the Complainant does not and can not
23 contend that any candidate that satisfied the CPD's criteria for participation was not invited to

2025 RELEASE UNDER E.O. 14176

1 attend or, conversely, that any candidate was invited who did not meet that criteria. Noting that the
2 criteria adopted for 2000 (and 2004) are "wholly transparent in application," and that the
3 information cited to in the "anonymous" interview is "demonstrably wrong," Response at 11-12, the
4 CPD includes at Tab F a copy of the 2000 Memorandum of Understanding between the Bush and
5 Gore campaigns, expressly stating that the CPD's selection criteria will govern debate candidate
6 selection.⁹ See also Declaration of Dorothy S. Ridings, former President of the League of Women
7 Voters and CPD board member since 1997, at Tab 7 (describing the decision-making process
8 leading to the adoption of the CPD's 2000 criteria, and disavowing that they were adopted with any
9 partisan or bipartisan purpose).

10 3. Analysis

11 In their April 6, 1998 Statement of Reasons in MURs 4451 and 4473, all five of the then
12 sitting Commissioners explained why the Commission unanimously found no reason to believe that
13 the CPD had violated the Act in connection with its sponsorship of the 1996 presidential debates.
14 While not squarely addressing the existence or content of any Memoranda of Understanding, the
15 Commission stated:

16 Finally, the General Counsel's Report suggests that the Clinton/Gore Committee and the
17 Dole/Kemp Committee expressed an interest to either include or exclude Mr. Perot and
18 that, as a result, the two candidate committees somehow tainted the debate selection
19 process. Absent specific evidence of a controlling role in excluding Mr. Perot, the fact
20 that the Committees may have discussed the effect of Mr. Perot's participation on their
21 campaigns is without legal consequence. There certainly is no credible evidence to
22 suggest that the CPD acted upon the instructions of the two campaigns to exclude Mr.
23 Perot.
24

⁹ The 2000 Memorandum of Understanding provided by the CPD is labeled "draft," but it appears to have been executed by representatives of the Gore/Lieberman and Bush/Cheney campaigns (Tab F at 31). According to the Brown Declaration, the document provided "is what I understand to be a true and complete copy of the executed Memorandum of Understanding in 2000 between the Gore and Bush campaigns." Brown Declaration at 16.

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1 Statement of Reasons at 11 (citations omitted); copy provided at Tab 12 to the CPD's exhibits. For
2 the reasons discussed below, this Office believes that the Memoranda of Understanding likewise do
3 not provide any specific or credible evidence that the major parties played a controlling role in
4 excluding debate participants or that the CPD acted upon their instructions.

5 Although the Complainant seems to argue that the history of the Memoranda of
6 Understanding support both his contention that the CPD is not "nonpartisan," and therefore is not
7 qualified to be a debate staging organization under the regulations, and his contention that the CPD
8 does not use objective selection criteria, it appears that the argument conceptually is best understood
9 as an attack on the selection criteria. Complainant appears to be arguing that CPD's published
10 criteria are a sham, and that the real criteria are that third-party candidates will be included or
11 excluded from the debates based on the sufferance of the two major party candidates.

12 The 2000 Memorandum of Understanding explicitly states that "the [CPD's]
13 Nonpartisan Candidate Selection Criteria for 2000 General Election Debate Participation shall
14 apply to determining the candidates to be invited to participate in these debates." Tab F at 2.
15 Complainant acknowledges that the CPD's criteria, which included the fifteen per cent polling
16 requirement, were adopted in January 2000 (Complaint at 11), predating the 2000 Memorandum
17 of Understanding, which is dated September 28, 2000.¹⁰ It is undisputed that no candidates

¹⁰ The other parts of the Memoranda of Understanding address the logistical details of the debates and have nothing to do with the selection of candidates. See Complaint at 8; see also Brown Declaration at 16. Moreover, the existence of the Memoranda has not been "secret" as claimed in the complaint. Since at least 1988, they have been described in several press articles, see Mary McGrory, *League Escapes "Charade,"* THE RECORD, NORTHERN NEW JERSEY, Oct. 9, 1988; Susan Page, *League Dumps Second Debate,* NEWSDAY, Oct. 4, 1988; Robert Tonelli, *Letter to the Editor Republicans control debates to protect their political monopoly,* THE LAS VEGAS REVIEW-JOURNAL, Sept. 29, 1996, and *No Debate*, which reports that in 1988, amid disputes over who would conduct the 1988 presidential debates, the president of the League of Women Voters "made public the secret Memorandum of Understanding—the detailed blueprint drafted by the [Bush and Dukakis] campaigns." *No Debate* at 32-33. The 2004 Memorandum has been made publicly available by Complainant (at <http://www.opendebates.org/news/agreement>), the Bush and Kerry campaigns (at <http://www.georgebush.com/News/Read.aspx?ID=3604> and http://www.johnkerry.com/pressroom/releases/pr_2004_0920b.html, respectively) and by other organizations as well (see, e.g., <http://www.pbs.org/nw/politics/debates.html> and <http://www.cnn.com/2004/ALLPOLITICS/09/27/debates.preview>).

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1 to disqualify it as a debate staging organization. Specifically, Complainant quotes Senator Alan
2 Simpson, who was still a member of the CPD's board of directors when the complaint and response
3 in this matter were filed, *see n. 3*, as saying in a March 2002 interview, "You have a lot of
4 thoughtful Democrats and Republicans on the commission that are interested in the American
5 people finding out more about the two major candidates—not about independent candidates who
6 mess things up." When Complainant asked Simpson if third-party or independent candidates should
7 be included in the presidential debate, he allegedly responded, "No . . . I think it's obvious that
8 independent candidates mess things up." Complaint at 7 (ellipsis in original).

9 Further, according to Complainant, Representative John Lewis, a CPD director from 1994
10 through 1998, allegedly told him in a September 2002 interview that:

11 There's no question that having the two major parties in absolute control of the
12 presidential debate process, and there's no question that they do, strengthens the two-
13 party system. These are the most important events of an election, and if no other
14 candidates are getting in the debates, the American people are just not going to hear
15 about them, which means the two parties basically have a monopoly.

16
17 Complaint at 7. Complainant also alleges that in July 2001 he interviewed former CPD director
18 Representative Barbara Vucanovich, who served from 1987 through 1997, and that Vucanovich
19 "praised Executive Director Janet Brown for being 'extremely careful to be bi-partisan.'" *Id.*
20 Finally, according to Complainant, David Norcross, a CPD director from 1987 through 1993,
21 allegedly acknowledged in a March 2001 interview: "[The CPD's] not really nonpartisan. It's
22 bipartisan." *Id.*¹¹

¹¹ Complainant also quotes from a 1984 New York Times Op-Ed article co-written by CPD director Newton Minow stating that responsibility for staging political debates should rest with the Democratic and Republican parties and that "although entrusting such debates to the major parties is likely to exclude independent and minor-party candidates, this approach is consistent with the two-party system. Moreover, if the Democratic and Republican nominees agreed, other candidates could be included." This Office does not believe that this 20-year old newspaper article, written before the CPD was established and without additional substantiation, should be regarded as an accurate reflection of Mr. Minow's current views. Indeed, Mr. Minow, submitted a sworn declaration, stating that "[c]ontrary to the paradigm addressed in my 1984 article, the CPD, as it has actually operated . . . is not in any sense, directly or (footnote continues on the following page)

1 In his sworn declaration, which is appended to the CPD's Response at Tab 2, Simpson states
2 that he does not remember Complainant having interviewed him "although it is entirely possible that
3 such an interview took place," and observes that apparently Complainant omitted some words from
4 the "quote" (quotation marks in original), but Simpson does not know what they are. Simpson
5 declares that he does know, however, that the statements attributed to him in the complaint do not
6 fully or fairly reflect his views. According to Simpson, he believes that the CPD's debates should
7 include the leading candidates for president and vice president, regardless of party affiliation, but
8 should exclude candidates with only marginal national electoral support; that the CPD's nonpartisan
9 candidate selection criteria were designed to identify those candidates who have achieved electoral
10 support levels sufficient to render them realistically as among the principal rivals for the presidency
11 and vice-presidency; and that "the CPD's [debate selection] criteria are a careful, reasonable and
12 appropriate approach to ensure that the leading candidates, regardless of party affiliation, are invited
13 to participate in the CPD's debates." *Id.*

14 As to Representatives Lewis and Vucanovich and Mr. Norcross, none of them have served
15 on the CPD's board of directors since 1998 at the latest. Only Senator Simpson was a CPD director
16 when he was allegedly interviewed and, although his statement, as reported by Complainant, that
17 independent candidates "mess things up" raises questions, Senator Simpson was only one of an
18 eleven-member board of directors (Brown Declaration at 2) and does not necessarily represent the
19 views of any other member. Further, Simpson's alleged comments, even if accurately reported, are
20 consistent with his sworn declaration if Simpson believes, as he appears to, that allowing third-party
21 candidates who lack national support levels of at least fifteen percent to participate in CPD-

indirectly controlled by the major parties." In addition, Minow, who has served on the CPD Board for eleven years, repeats the same views as the former CPD board members concerning the nonpartisan nature of the CPD's candidate selection criteria and its application of them. See Tabs 3, 4 5, and 6.

1 sponsored debates would "mess things up." In addition, Simpson's sworn declaration, as well as the
2 sworn declarations submitted by Lewis, Vucanovich and Norcross at Tabs 5, 4 and 6, respectively,
3 all aver that Complainant did not fully or fairly represent their views; for his part, Complainant
4 chose not to provide transcripts of the purported interviews.

5 With respect to Complainant's use of isolated statements from alleged interviews he has had
6 with presidential campaign committee representatives, including Mickey Kantor, Scott Reed, Frank
7 Donatelli, Bobby Burchfield, and George Stephanopolous, according to the CPD, none of these
8 individuals participated in the CPD's decision-making processes. Therefore, their personal views,
9 even assuming—without supporting transcripts—that Complainant presents them fully and fairly,
10 do not provide a sufficient basis for further investigation of Complainant's allegations concerning
11 the CPD, particularly as the implications Complainant draws from their statements have been
12 refuted by the declarations provided with the CPD's response.

13 **E. Supplement to the Complaint**

14 **1. Alleged funding of debate by state parties**

15 Complainant asserts that Arizona State University, which was selected by the CPD to
16 serve as the site of its October 13, 2004 debate, called upon the Arizona Democratic and Republican
17 parties to help raise funds to cover debate-related costs, including what Complainant characterizes
18 as a "\$750,000 fee award to the CPD."¹² Supplement at 2; see Appendix A to the Supplement.
19 Complainant's conclusion, however, that "[s]uch activity demonstrates that the CPD does in fact
20 'support, or oppose political candidates or political parties' as prohibited by 11 C.F.R. § 110.13(a)"

¹² According to the CPD's website, "Each debate host will agree to raise \$750,000 to cover the production costs of a single debate; these funds are paid directly to the CPD and are tax-deductible. Each proposal should include a representation that host site officials have discussed the matter of financing with community leaders and are confident that the funds can be raised." See <http://www.debates.org/pages/sitesel.html>.

(*id.*), is contradicted by the fact that Arizona State University, not the CPD, is the entity which was reportedly seeking funds from state parties and others. *Id.*

2. June 11, 1988 IRS Letter

Complainant attaches as Appendix B to the Supplement a letter from the IRS, which he describes as an "IRS warning" concerning the nature of the CPD's 1988 debate selection criteria. Supplement at 2. According to Complainant, the IRS declined to issue a ruling requested by the CPD as to whether its 1988 debate selection criteria would adversely affect its tax exempt status under section 501(c)(3) of the Internal Revenue Code; Complainant argues that the IRS declined to do so "because of the subjectivity and imprecision of the proposed candidate selection criteria," *id.* at 3, thus proving that the CPD's 1988 debate selection criteria were not "pre-established objective" criteria, as required by 11 C.F.R. § 110.13(c).

Leaving aside that the letter is now sixteen years old, Complainant misconstrues the IRS letter when he asserts that the IRS "did not find the candidate selection criteria employed by the CPD to be 'pre-established objective [sic].'" Supplement to Complaint at 3. Although the IRS declined to issue an advance ruling due to the "imprecise facts and circumstances," the letter states the IRS is nonetheless "releasing [the CPD] from the condition expressed in [an earlier IRS letter] relating to the use of funds in your debates without first receiving a favorable ruling from the Internal Revenue Service," Supplement to Complaint, Appendix B at 3. Moreover, since its inception, the CPD has consistently retained its "501(c)(3)" tax status.¹³ Further, to the extent that Complainant is using the 1988 IRS letter to criticize the objectivity of the criteria used by the CPD

¹³ At a press conference on April 12, 2004 which included Complainant, Open Debates announced that it had filed a complaint with the IRS against the CPD alleging that it has violated the section 501(c)(3) ban on campaign intervention by favoring the Republican and Democratic parties and excluding third-party and independent candidates from presidential debates. See <http://www.opendebates.org/newsrelatedarticles/taxnotes.html>. The Open Debates website does not indicate that the IRS has ruled on its complaint.

1 for its 1988-1996 debates, the Commission has already considered the criteria and found them to be
2 compatible with the Act and the Commission regulations. As discussed, in 2000 the CPD adopted
3 new, more transparent selection criteria. See discussion, *supra*.¹⁴

4 Based on the above, this Office concludes that the factual allegations presented by
5 Complainant fail to provide a sufficient basis for further investigation of Complainant's allegations
6 concerning the CPD. This Office therefore recommends that the Commission find no reason to
7 believe that the Commission on Presidential Debates violated or continues to violate 2 U.S.C.
8 § 441b(a), and close the file.

9 **III. RECOMMENDATIONS**

- 10 1. Find no reason to believe that the Commission on Presidential Debates violated or continues
11 to violate 2 U.S.C. § 441b(a).
12
13 2. Approve the appropriate letters.
14
15 3. Close the file.

16 Lawrence H. Norton
17 General Counsel

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19 Rhonda J. Vosdinger
20 Associate General Counsel
21 for Enforcement
22

23
24
25 12/7/04
26 Date

27 BY:

28 Susan L. Lebeaux
29 Susan L. Lebeaux
30 Assistant General Counsel
31

32 Ruth Heilizer
33 Ruth Heilizer
Attorney

¹⁴ Complainant also attached as Appendix C a number of news editorials which favor changes in the CPD – sponsored debates. Although several of the editorials make assertions about the major parties' control of the CPD that are similar to those made by Complainant, they contain no direct evidence concerning the CPD's actions or motivations.

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MUR 5414

**DECLARATIONS OF ALAN K. SIMPSON,
NEWTON MINOW, BARBARA VUCANOVICH,
JOHN LEWIS AND DAVID NORCROSS**

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Commission on Presidential Debates

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MUR 5414

DECLARATION OF ALAN K. SIMPSON

I, Alan K. Simpson, give this declaration based on personal knowledge as follows:

1. I am a member of the Board of Directors of the Commission on Presidential Debates ("CPD"). I serve on the Board because I have always supported the CPD's efforts to ensure that the public has the remarkable opportunity, during the final weeks of the general election campaign, to view debates among the individuals who have emerged as the leading candidates for the offices of President and Vice President of the United States.

2. I am aware of the Complaint against the CPD, filed with the Federal Election Commission by Mr. George Farah, on behalf of the organization named Open Debates. I understand that the Complaint includes the following passage:

CPD director Alan Simpson said, "You have a lot of thoughtful Democrats and Republicans on the commission that are interested in the American people finding out more about the two major candidates -- not about independent candidates, who mess things up." When asked if third-party or independent candidates should be included in the presidential debates, Simpson said, "No . . . I think it's obvious that independent candidates mess things up." (Ellipses indicating omitted words in original)

3. Mr. Farah cites an interview he conducted with me on March 18, 2002 as his source for these quotes. I have no recollection of this interview from two years ago -- I do many per month -- but it is entirely possible that it took place. I am most assuredly certain, however, that I was not told that the purpose of any such interview was to press a claim against the CPD.

Although the "quote" itself indicates that some words have been omitted by Mr. Farah, I certainly have no present way of knowing what words have been omitted.

4. I do know that the statements Mr. Farah attributes to me in the Complaint do not fairly or fully reflect my views with respect to the participation of nonmajor party candidates in debates sponsored by the CPD. I believe that the CPD's debates should include the leading candidates for president and vice-president, regardless of party affiliation. However, I do not believe the CPD's general election debates should include candidates who have only marginal national electoral support. The CPD thoughtfully adopted nonpartisan candidate selection criteria solely designed to identify those candidates who have achieved a level of electoral support enabling them to realistically be considered among the principal rivals for president and vice president. I believe that the CPD's criteria are a careful, reasonable and appropriate approach to ensure that the leading candidates, regardless of party affiliation, are invited to participate in the CPD's debates.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22nd day of March, 2004.


ALAN K. SIMPSON

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

The Commission on Presidential Debates)

MUR 5414

DECLARATION OF NEWTON MINOW

I, Newton Minow, give this declaration based on personal knowledge as follows:

1. I am presently a member of the Board of Directors of the Commission on Presidential Debates ("CPD"). I have served as a Director since 1993.

2. I am aware of the Complaint against the CPD, filed with the Federal Election Commission by Mr. George Farah, on behalf of the organization named Open Debates. I understand that the Complaint includes the following quote from an Op-Ed article I co-authored in 1984 and which appeared in the *New York Times*:

Because debates are political events, responsibility for them should rest with the political system—with the Democratic and Republican PartiesAlthough entrusting such debates to the major parties is likely to exclude independent and minor party candidates, this approach is consistent with the two-party system. Moreover, if the Democratic and Republican nominees agreed, other candidates could be included.

3. Mr. Farah introduces this quote with the following sentence: "The CPD directors believe in a two-party system, and most are contemptuous of third-party and independent candidates." Open Debates Complaint at 6.

4. To my knowledge I have never spoken with Mr. Farah and he most assuredly has not accurately represented my views.

5. Contrary to the paradigm addressed in my 1984 article, the CPD, as it has actually operated, is an independent non-profit organization, which receives no funding from any political

party. No official from the major parties holds any office or position whatsoever with the CPD, and the CPD is not in any sense, directly or indirectly, controlled by the major parties.

6. In the eleven years that I have been on the CPD Board -- and therefore have direct knowledge -- the CPD has at all times conducted itself in a non-partisan manner, including in its adoption and application of criteria to determine candidate eligibility to participate in debates hosted by the CPD. During my tenure on the Board of the CPD, all candidate selection decisions have been made based on a good faith application of the CPD's published non-partisan candidate selection criteria. I am not aware of any decision by the CPD concerning candidate eligibility to participate in the debates that was controlled or directed by the major parties or their nominees, as is alleged in the Open Debates complaint.

7. I serve on the Board because I support the CPD's efforts to ensure that the public has the opportunity, during the final weeks of the general election campaign, to view debates among the individuals who have emerged as the leading candidates for the offices of President and Vice President of the United States. I believe that the CPD's debates should include the leading candidates for president and vice-president, regardless of party affiliation.

8. I do not believe, however, that the CPD's general election debates should include candidates who have only marginal national electoral support. The CPD, after careful deliberation and study, has adopted nonpartisan candidate selection criteria designed to identify those candidates who have achieved a level of electoral support enabling them to realistically be considered among the principal rivals for president and vice president. I believe that the CPD's criteria are a careful, reasonable and appropriate approach to ensure that the leading candidates, regardless of party affiliation, are invited to participate in the CPD's debates.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 22ND
day of March, 2004.

Newton Minow
NEWTON MINOW

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Commission on Presidential Debates

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MUR 5414

DECLARATION OF BARBARA VUCANOVICH

I, Barbara Vucanovich, give this declaration based on personal knowledge as follows:

1. I served as a member of the Board of Directors of the Commission on Presidential Debates ("CPD") from February 1987 to April 1997. I currently have no affiliation with the CPD.

2. I support the CPD's efforts to ensure that the public has an opportunity, during the final weeks of the general election campaign, to view debates among those individuals, regardless of their party affiliation, who have emerged as the leading candidates for the Offices of President and Vice President of the United States.

2. I am aware of the complaint against the CPD filed with the Federal Election Commission by Mr. George Farah, on behalf of the organization named Open Debates. The complaint includes the following sentence: "Barbara Vucanovich, a former CPD Director, praised Executive Director Janet Brown, for being 'extremely careful to be bi-partisan.'" Mr. Farah cites an interview he conducted with me on July 23, 2001 as the source for this quote. The complaint relies on this partial quote to support the contention that the CPD is not "nonpartisan" but rather is "bipartisan."

3. I remember being interviewed by Mr. Farah. He specifically represented to me that he was a reporter. He did not mention that the purpose of the interview was to press a claim against the CPD.

4. The quote attributed to me, as it is used in the complaint, does not fully or fairly reflect my views of the CPD or the manner in which it has operated. I used the word "bi-partisan," as many do, to mean not favoring any one party over another. It was not intended in the sense Mr. Farah has used it in the complaint.

5. It is my firm belief that the CPD has at all times conducted itself in a non-partisan manner, including in its adoption and application of criteria to determine candidate eligibility to participate in debates hosted by the CPD. During my tenure on the Board of the CPD, all candidate selection decisions were made based on a good faith application of the CPD's published non-partisan candidate selection criteria. I am not aware that any decision by the CPD concerning candidate eligibility to participate in the debates was controlled or directed by the major parties, as is alleged in the Open Debates complaint.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 18th day of March, 2004.

Barbara D. Vucanovich
BARBARA VUCANOVICH

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)

The Commission on Presidential Debates)

MUR 5414

DECLARATION OF JOHN LEWIS

I, John Lewis, give this declaration based on personal knowledge as follows:

1. I served as a member of the Board of Directors of the Commission on Presidential Debates ("CPD") for the period from 1994 to 1998. I served on the Board because I support the CPD's efforts to ensure that the public has the opportunity, during the final weeks of the general election campaign, to view debates among the individuals who have emerged as the leading candidates for the offices of President and Vice President of the United States.

2. I am aware of the Complaint against the CPD, filed with the Federal Election Commission by Mr. George Farah, on behalf of the organization named Open Debates. I understand that the Complaint includes the following quote attributed to me:

There's no question that having the two major parties in absolute control of the presidential debate process, and there's no question that they do, strengthens the two-party system. These are the most important events of an election, and if no other candidates are getting in the debates, the American people are just not going to hear about them, which means the two parties basically have a monopoly.

3. Mr. Farah cites an interview he conducted with me on September 17, 2002 as his source for this quote. I have no recollection of this interview from two years ago, but it is entirely possible that it took place. I am certain, however, that I was not told that the purpose of any such interview was to press a claim against the CPD.

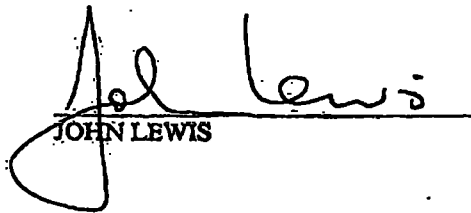
4. Mr. Farah relies on the above quote attributed to me to support his thesis that the major parties control the CPD and that the CPD is "bipartisan" rather than "nonpartisan." Mr. Farah has not represented my views fully or fairly. While, as noted, I do not remember the interview with Mr. Farah, it is interesting that the quote he attributes to me does not say that the major parties control the CPD.

5. I believe that the CPD's debates should include the leading candidates for president and vice-president, regardless of party affiliation. However, I do not believe the CPD's general election debates should include candidates who have only marginal national electoral support. The CPD has adopted nonpartisan candidate selection criteria designed to identify those candidates who have achieved a level of electoral support enabling them realistically to be considered among the principal rivals for president and vice president. I believe that the CPD's criteria are a careful, reasonable and appropriate approach to ensure that the leading candidates, regardless of party affiliation, are invited to participate in the CPD's debates.

6. During my tenure on the Board of the CPD, candidate selection decisions were made based on a good faith application of the CPD's published non-partisan candidate selection criteria. I am not aware that any decision by the CPD concerning candidate eligibility to participate in the debates was controlled or directed by the major parties, as is alleged in the Open Debates complaint.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17 day of March, 2004.


JOHN LEWIS

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

The Commission on Presidential Debates \

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MUR 5414

DECLARATION OF DAVID NORCROSS

I, David Norcross, give this declaration based on personal knowledge as follows:

1. I served as a member of the Board of Directors of the Commission on Presidential Debates ("CPD") from 1987 to 1993. I do not presently serve on the Board or hold any other position with the CPD. I have not held official position with the CPD for over a decade and have no direct knowledge concerning its operations since I left the Board.

2. I am aware of the Complaint against the CPD, filed with the Federal Election Commission by Mr. George Farah, on behalf of the organization named Open Debates. I understand that the Complaint includes and attributes to me the following quote regarding the CPD: "It's really not nonpartisan. It's bipartisan."

3. Mr. Farah cites an interview he conducted with me on March 26, 2001 as his source for this quote. I recall doing the interview. Mr. Farah did not tell me that the purpose of the interview was to press a claim against the CPD.

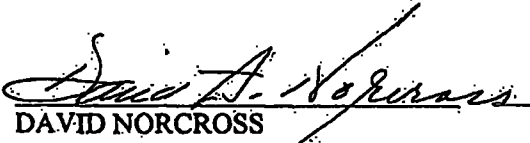
4. I am aware that Mr. Farah has used the comments he attributes to me as part of his effort to advance the claim that the CPD supports the major party nominees and opposes the candidacies of nonmajor party candidates and, therefore, is bipartisan rather than nonpartisan. Mr. Farah has not fully or fairly represented my views.

5. In the years that I served on the CPD Board -- and therefore have direct knowledge -- the Board made considerable efforts to deal fairly with third-party candidates and adopted and applied nonpartisan criteria to determine candidate eligibility to participate in debates hosted by the CPD. During my tenure on the Board of the CPD, all candidate selection decisions were made based on a good faith application of the CPD's published nonpartisan candidate selection criteria. I am not aware of any decision by the CPD concerning candidate eligibility to participate in the debates that was controlled or directed by the major parties or their nominees, as is alleged in the Open Debates complaint.

6. I served on the CPD Board because I support the CPD's efforts to ensure that the public has the opportunity, during the final weeks of the general election campaign, to view debates among the individuals who have emerged as the leading candidates for the offices of President and Vice President of the United States. I believe that the CPD's debates should include the leading candidates for president and vice-president, regardless of party affiliation.

7. I do not believe, however, that the CPD's general election debates should include candidates who have only marginal national electoral support. During the time I served on the Board, the CPD, after careful deliberation and study, adopted nonpartisan candidate selection criteria designed to identify those candidates who had achieved a level of electoral support enabling them realistically to be considered among the principal rivals for president and vice president. The CPD's criteria in place while I was on the Board represented a careful, reasonable and appropriate approach to ensure that the leading candidates, regardless of party affiliation, were invited to participate in the CPD's debates.

I declare under penalty of perjury that the foregoing is true and correct. Executed this ____
day of March, 2004.


DAVID NORCROSS